

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ALBERT KATES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GENERAC POWER SYSTEMS, INC. AND
GENERAC HOLDINGS, INC.,

Defendant.

CIVIL ACTION NO.:

**CLASS ACTION COMPLAINT &
JURY DEMAND**

Plaintiff Albert Kates (“Plaintiff”), by and through his undersigned counsel, on behalf of himself and all others similarly situated, upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. Defendants Generac Power Systems, Inc. and Generac Holdings, Inc. (collectively, “Generac” or “Defendants”) produce power generation systems for residential, commercial, and industrial markets. Generac was founded in 1959 as a portable generator producer and has since expanded its product line. In 2019, Generac began marketing the PWRcell solar energy storage and backup system (“PWRcell system”).

2. The PWRcell system is designed to be installed together with a new solar panel array on a residential home. The PWRcell system is linked to the solar panels and stores energy that they produce. Generac does not produce solar panels but has authorized a number of “dealers” that sell and install solar panels to include the PWRcell systems in their installations.

3. Among the key components of the PWRcell systems are SnapRS (Rapid Shutdown) inline disconnect switches (“SnapRS switches”), which are connected to each solar panel. The SnapRS switches are safety devices designed to immediately shut down any solar panels with excessive energy outputs, preventing electrical surges such as those caused by lightning strikes. As each solar panel gets a separate SnapRS switch, the PWRcell system is installed with as many switches as there are panels being installed on the home. As of April of 2023, there were three models of SnapRS switches: the 801, 801A, and 802.

4. On May 4, 2021, Plaintiff contracted with Power Home Solar LLC, d/b/a Pink Energy (“PHS”), an authorized seller of Generac PWRcell systems, for the installation of a solar energy system in his home. See attached Exhibit A which is an agreement entitled “Solar Energy System Purchase & Installation Agreement” dated May 4, 2021 (the “PHS Contract”). The installation was to include a Generac 7.6 kW PWRcell. PHS clarified in the contract that it would not provide a warranty for the PWRcell, and the system would instead be covered by the Generac Manufacturer Limited Warranty. The total cost of the contract was \$69,140¹, including \$20,000 for the PWRcell system.

5. In April of 2022, employees of PHS commenced the installation of the solar energy system at Plaintiff’s home. The solar panels were successfully installed, but the PHS employees informed Plaintiff that they were unable to successfully install the PWRcell system, and would contact employees of Generac to complete that installation. Plaintiff was unable to use the solar panels installed on his home prior to the arrival of the Generac employees.

6. In August of 2022, an employee of Generac arrived and installed the PWRcell system, and commenced safety checks that were to be run prior to activating the system for

¹ The contract amount is \$79,140 but Mr. Kates received a \$10,000 pre-agreed upon rebate from PHS.

Plaintiff's use. However, the installed system failed to pass the safety checks. The Generac employee informed Plaintiff that there was a defect in the system related to the connection with the solar panels (the "Defect"), and that the system had to remain off until the Defect could be fixed. The employee informed Plaintiff that he would receive further communication from Generac and a later visit to fix the Defect.

7. As of June of 2023, Plaintiff has not received any further communication or visits from Generac employees. He has not had any use of the solar panels or PWRcell system installed in his home.

8. In the intervening time since August of 2022, Plaintiff has learned that the Defect in the connection between the PWRcell system and the solar panels is in fact a widespread issue due to problems with the SnapRS switches that connect to the solar panels being defective due to faulty materials and/or workmanship.

9. As a result of the Defect, Plaintiff has not had any use of the solar energy system in his home despite having paid almost \$70,000 for it, including \$20,000 alone for the Generac PWRcell system. Plaintiff has not received any benefit of his bargain, and also has not been able to power his home with cheaper and more sustainable energy as promised by Generac through its representative dealer, PHS. Plaintiff has also not benefitted from tax credits that he was informed he would receive from the state of South Carolina and the federal government for powering his home with solar energy.

10. On information and belief, Plaintiff is among numerous customers who have been harmed as a result of the Defect, both nationwide and within the state of South Carolina.

11. On August 1, 2022, PHS filed a complaint against Generac for knowingly supplying defective components, among other transgressions, entitled *Power Home Solar, LLC*

D/B/A Pink Energy v. Generac Power Systems, Inc., No. 6:22-cv-00043 (W.D. Va. Aug. 1, 2022) (“The PHS Complaint”). As stated in the complaint, PHS pointed out that it first brought the Defect to Generac’s attention as early as April of 2021, when a SnapRS switch installed for a customer in Ohio melted. *Id.* at *7-8. PHS promptly reported the issue to Generac and provided photographs of the defective component. *Id.* at *8. In a series of communications through the summer and fall of 2021, Generac repeatedly assured PHS that it had diagnosed and fixed the Defect in its new model, the SnapRS 801A model, which had been released on the market, but PHS customers continued to experience problems caused by the Defect. *Id.* at *9-16.

12. In a letter to solar energy consumers on May 23, 2022, Generac acknowledged that both the SnapRS 801 and 801A models experienced the defect, and Generac would supply an 802 model allegedly free of the Defect for replacement. *Id.* at *17-18. As of August of 2022, however, Generac had not supplied enough 802 model switches for PHS customers, and PHS customers continued to experience problems caused by the Defect. *Id.* at *18 and 24.

13. Despite knowledge of the Defect, a Generac employee still installed the PWRcell system in Plaintiff’s home in August of 2022. When the system failed to pass the safety checks and could not activate, the Generac employee informed Plaintiff that it was defective and then left, leaving Plaintiff with a solar energy system that he had paid for but could not use.

14. Despite knowing of the Defect, Generac has continued to provide defective SnapRS switches to Plaintiff and other solar energy customers and has continued to provide warranties that it knows the defective switches will not conform to.

15. Plaintiff files this complaint on behalf of himself and numerous other solar energy customers for Generac’s breach of express warranty; breach of the implied warranty of

merchantability; breach of the Magnuson-Moss Warranty Act; breach of the South Carolina Unfair Trade Practices Act, SC Code § 39-5-10 *et seq.*; negligence; and unjust enrichment.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332(d)(2) ("CAFA"), because (a) there are 100 or more Class members, (b) at least one Class member is a citizen of a state that is diverse from Defendants' citizenship, and (c) the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

17. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

18. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendants' principal place of business is in this District.

PARTIES

19. Plaintiff Albert Kates is a citizen of Columbia, South Carolina. Plaintiff has purchased and continues to possess a defective and unusable Generac PWRcell system.

20. Defendant Generac Power Systems, Inc. is a Wisconsin corporation with its principal place of business located at S45 W29290 Highway 59, Waukesha, Wisconsin 53189.

21. Defendant Generac Holdings, Inc. is the parent company of Generac Power Systems, Inc. Generac Holdings, Inc. is a Delaware corporation with its principal place of business located at S45 W29290 Highway 59, Waukesha, Wisconsin 53189.

SUBSTANTIVE ALLEGATIONS

22. Generac produces power generation systems for residential, commercial, and industrial markets. In 2019, Generac entered the residential solar energy business by purchasing Pika Energy, Inc. Thereafter, Generac began manufacturing and marketing the PWRcell systems

to manage solar energy systems, store energy, and provide backup energy in the event of insufficient power generation from the connected solar panels.

23. Generac advertises the PWRcell as “an intelligent energy storage system” that monitors and manages power generation and protects customers from power surges. The SnapRS switches are key components that immediately disconnect solar panels that produce such a surge. Each system has a separate SnapRS switch for each solar panel.

24. Generac enters into contracts with solar energy system installers such as PHS. The installers purchase the PWRcell systems and install them together with solar panels to provide solar energy to consumers. The consumers are the intended beneficiaries of Generac’s contracts with the installers.

Generac’s Knowledge and Handling of the Defect

25. In April of 2021, PHS received a complaint from a customer in Cincinnati, Ohio about a lack of energy production. The PHS Complaint, *supra*, at *7. Upon making a service call, a PHS employee discovered that a SnapRS switch within the customer’s solar energy system had melted, causing the problem. *Id.* PHS immediately reported the problem to Generac and provided photographs of the melted switch. *Id.* at *8.

26. During the summer of 2021, PHS learned that other solar energy system installers were experiencing the same problem with the Generac SnapRS switches, suggesting how widespread the problem was. *Id.*

27. In August of 2021, a defective SnapRS switch caused a housefire in Lancaster, Kentucky. *Id.* On August 12, 2021, Generac and PHS participated in a conference call about the fire, and PHS inquired about the potential hazards associated with the SnapRS switches. *Id.* at *9. Generac disclosed that it was investigating what was causing the Defect. *Id.*

28. On August 18, 2021, another defective SnapRS switch caused a housefire in Lexington, South Carolina. *Id.*

29. On August 19, 2021, Generac confirmed that it had discovered the cause of the Defect: The SnapRS switches were becoming overactive and repeatedly turning on and off, which was causing them to melt and bubble out. *Id.* at *10. Generac further stated that it was sending out firmware updates to fix the issue. *Id.*

30. Rather than fix the issue, the firmware update replaced one problem with another, causing “PVRSS Lockout” system errors that permanently decreased and/or shut down customers’ solar energy systems. *Id.* at *13. The update caused a drastic increase in customer service calls and complaints. *Id.* at *14.

31. Later in 2021, Generac began supplying the SnapRS 801A model, which it claimed did not have the Defect. *Id.* However, PWRcell systems with the 801A model switches continued to experience the same problems, and it quickly became clear that the 801A model switches had the same Defect. *Id.* at *15.

32. In the spring of 2022, Generac submitted a report to the Consumer Product Safety Commission (“CPSC”). *Id.* at *17. Generac stated that it did not believe that a product recall or any other corrective action was necessary. *Id.*

33. On May 23, 2022, Generac sent out a letter to solar energy consumers acknowledging that both the SnapRS 801 and 801A models suffered from the Defect. *Id.* Generac announced in the letter that it had developed a SnapRS 802 model to replace the defective models. *Id.* at *18.²

² At least one class action complaint against Generac has alleged that the SnapRS 802 model also suffers from the Defect. *See* Notice of Removal, *Baltimore et al v. Generac Power Systems, Inc.*, No. 23-cv-772, at *3 (E.D. Wi. April 21, 2023).

34. However, Generac did not supply installers such as PHS with enough SnapRS 802 models switches to replace all defective SnapRS switches in their customers' systems. *Id.*

35. In June of 2022, Generac acknowledged a near 50% failure rate in SnapRS switches. *Id.*

36. Despite the acknowledgements of the Defect and unsuccessful attempts to fix it, Generac continued to provide defective products to solar energy consumers. *Id.* at *18 and 24.

Generac Knowingly Installed and Warranted a Defective Product in Plaintiff's Home

37. Plaintiff contracted with PHS on May 4, 2021 for a solar energy system, including a Generac 7.6 kW PWRcell. See Exhibit A. According to the contract, the PWRcell system would be covered by the Generac Manufacturer Limited Warranty (the "Generac Warranty"). The total cost of the contract was \$69,140, including \$20,000 for the PWRcell system.³

38. PHS installed the solar panels on Plaintiff's home in April of 2022, and then contacted Generac to complete the installation with the PWRcell system. A Generac employee arrived at Plaintiff's home in August of 2022 and installed the PWRcell system.

39. As set forth above, by August of 2022, Generac was well aware of the Defect and had made multiple unsuccessful attempts to resolve the problem. Nevertheless, it continued to provide defective systems for solar energy consumers. Plaintiff was a victim of this practice.

40. When the newly installed PWRcell system failed to pass safety checks, the Generac employee informed Plaintiff that the system was defective and had to remain off. The employee further informed Plaintiff that he would be contacted by Generac and a later visit would occur to fix the problem. However, no such follow-up contact or visit occurred.

³ Plaintiff took out a 25-year loan at a 3.49% interest rate to pay the cost of the contract. The interest adds to his expenses for what has turned out to be a defective and unusable power system. *See also* Fn 1, *supra*.

41. Per the terms of Plaintiff's contract with PHS, Plaintiff's PWRcell system is covered by the Generac Warranty, which warrants that each component "will be free from defects in material and workmanship" for the following periods:

Product	Model Number	Warranty Period	Coverage
Generac PWRcell Battery Cabinet	APKE00007 APKE00028	10 years	Parts, Labor, and Limited Travel
Generac PWRcell Battery Modules	A0000391219 G0080040 G0080001 G0080003 G0080005	10 years or 7.56MWh of energy throughput per module, whichever comes first (i.e. a six module system carries a warranty of 10 years or 45.36 MWh of total energy throughput). Capacity retention guarantee at the end of the warranty period: At least 70% of nameplate rating.	
Generac PWRcell Inverter	APKE00014 APKE00013 XVT076A03 XVT114G03	10 years	
PWRmanager™	G0080090	10 years	
PV Link™	APKE00010	25 years	
SnapRS™	APKE00011 RS801a RS802	25 years	

42. The Generac Warranty further states that "Generac will, at its discretion, repair or replace any part(s) which, upon evaluation, inspection, and testing by Generac, an Independent Authorized Service Dealer or certified installer, is found to be defective."

43. The PWRcell system in Plaintiff's home has remained defective and unusable from the time of installation according to Generac's own representative, and thus the system should be replaced pursuant to the Generac Warranty.

44. Despite its awareness that Plaintiff's PWRcell system suffers from the Defect, Generac has refused or is unable to fix the problem, which violates the terms of the Generac Warranty.

Plaintiff Has Not Received the Benefits of Purchasing a Residential Solar Energy System

45. As the PWRcell system in Plaintiff's home remains defective and unusable, Plaintiff has not benefited from his purchase of a solar energy system for his home.

46. Despite the hefty price, Plaintiff anticipated that he would benefit from the purchase in the long term via much cheaper energy bills and federal and/or state solar energy tax credits. As Plaintiff's solar energy system remains unusable, Plaintiff has not experienced any such benefits and is unable to utilize the promised tax credits.

47. Plaintiff receives his electricity from Dominion Energy South Carolina, Inc. ("Dominion Energy SC"). Dominion Energy SC offers Solar Choice and Net Energy Metering ("NEM") programs that reduce electricity costs for solar energy consumers. On January 25, 2023, Plaintiff received an email from Dominion Energy SC stating that he would not be able to participate in the Solar Choice and NEM programs until his solar energy system begins producing energy. The email states: "As of today there has been no generation recorded for your system which indicates that your system is not wired correctly or there is an issue with your solar equipment." See attached Exhibit B, which is a copy of the email dated January 25, 2023 from Dominion Energy South Carolina, Inc. to Albert Kates.

48. As Plaintiff has not been able to activate his defective solar energy system per the instructions of Generac's representative, because the system failed to pass safety checks, he is unable to fulfill this requirement and benefit from Dominion Energy SC's offerings.

49. In addition, South Carolina offers a Solar Tax Credit for as much as 25% of yearly solar energy costs, capped at the lesser of \$3,500 or 50% of the resident's tax liability for the year, for a period of up to ten (10) years. As Plaintiff is unable to use his solar energy system, he cannot benefit from the tax credit.

50. Plaintiff is likewise unable to benefit from the federal solar tax credit, which is up to 30% for systems installed in 2022 and has no maximum amount.

51. All-in-all, if Plaintiff had the fully safe and functional solar energy system that he believed he was purchasing, his benefits in the long term would have drastically outweighed the cost he paid for the system. However, because Generac knowingly provided him with a defective product has refused or is unable to fix the problem, he is unable to reap those benefits.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of two Classes defined as:

The Nationwide Class is defined as:

All persons in the United States who purchased a residential solar energy system including a Generac PWRcell system that contained the defective SnapRS switches.

The South Carolina Subclass is defined as:

All citizens of South Carolina who purchased a residential solar energy system including a Generac PWRcell system that contained the defective SnapRS switches.

Excluded from the Classes are the Defendants herein, any person, firm, trust, corporation, officer, director, or other individual or entity in which a Defendant has a controlling interest or which is related to or affiliated with the Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

53. The members of the Classes are so numerous that joinder of all members is impracticable. The precise number of Class members is unknown to Plaintiff at this time, but the names and addresses of the Class members can be ascertained from the books and records of Generac and/or its authorized sellers and agents. Notice can be provided to such record owners by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions arising under the federal securities laws.

54. Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes. Plaintiff has retained competent counsel experienced in class action litigation under the federal securities laws to further ensure such protection and intend to prosecute this action vigorously.

55. Plaintiff's claims are typical of the claims of the other members of the Classes because Plaintiff's and all the Class members' damages arise from and were caused by the same transgressions done by or chargeable to Defendants. Plaintiff does not have any interests antagonistic to, or in conflict with, the Classes.

56. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

57. Common questions of law and fact exist as to all members of the Classes and predominate over any questions solely affecting individual members of the Classes. Among the questions of law and fact common to the Classes are:

(a) Whether the widespread failure or significant problems with the SnapRS switches in the PWRcell systems result from use of defective materials, workmanship, and/or design;

(b) Whether Generac knew or had reason to know of the prevalence of such defects while manufacturing, marketing, and selling the PWRcell systems;

(c) Whether consumers could reasonably have discovered the Defect prior to purchasing the solar energy systems;

- (d) Whether the presence of the Defect at the time of sale and installation constitutes a breach of Generac's express warranties;
- (e) Whether the presence of the Defect at the time of sale and installation constitutes a breach of the implied warranty of merchantability;
- (f) Whether Generac engaged in deceptive practices by marketing and selling PWRcell systems that it knew or had reason to know contained defective SnapRS switches;
- (g) Whether Generac was negligent in manufacturing, marketing, and selling PWRcell systems that contained defective SnapRS switches;
- (h) Whether Generac was unjustly enriched by manufacturing, marketing, and selling PWRcell systems that contained defective SnapRS switches; and
- (i) Whether Plaintiff and Class Members suffered damages as a result of the transgressions described herein.

CLAIMS FOR RELIEF

COUNT I

BREACH OF EXPRESS WARRANTY (On Behalf of Plaintiff and the Nationwide Class or, Alternatively, the South Carolina Subclass)

58. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

59. As set forth above, Generac expressly warrants each component of its PWRcell systems as "free from defects in material and workmanship" for either ten (10) or twenty-five (25) years. As the defective SnapRS switches were part of the PWRcell systems from the time of installation, all PWRcell systems containing the defective switches have not lived up to the warranty.

60. Generac has further failed to comply with its express warranties by refusing to or being unable to repair or replace the defective SnapRS switches, despite knowing that Plaintiff and Class Members have been affected by the Defect.

61. As the intended beneficiaries of Generac's contracts with its authorized installers, Plaintiff and Class Members have privity with Generac. Additionally, Plaintiff and Class Members are the direct recipients of the warranties issued by Generac that cover the defective PWRcell systems.

62. As a result of Generac's breaches of its express warranties, Plaintiff and Class Members have suffered damages of an amount to be determined at trial, and seek all available remedies allowed by law.

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (On Behalf of Plaintiff and the Nationwide Class or, Alternatively, the South Carolina Subclass)

63. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

64. Generac is a merchant who regularly engages in the manufacture, marketing, and distribution of residential power systems. Plaintiff and Class Members purchased the Generac PWRcell systems which were in that category. By operation of law, Generac impliedly warranted to Plaintiff and Class Members that the products were fit for their intended use.

65. Contrary to the implied warranties, the PWRcell systems were not fit for their intended use due to their defective nature of their SnapRS switches. Generac knew or had reason to know of the defective nature of the SnapRS switches prior to issuing the implied warranties.

66. While the defective manufacturing was present at the time the warranties were issued, Plaintiff and Class Members could not have discovered it at that time. At the time of

purchase, Plaintiff and Class Members reasonably expected the power systems to be fit for their intended use, and they did not receive the goods they bargained for. Had they known of the defective manufacturing, they would not have made the purchases.

67. Plaintiff and Class Members used the power systems in the ordinary manner for which they were intended. The products were not altered, and no action by Plaintiff and Class Members caused nor contributed to the defects.

68. Pursuant to the Magnuson-Moss Warranty Act, Generac is prohibited from disclaiming or limiting the implied warranty of merchantability so as to not cover the defective SnapRS switches.

69. The implied warranty of merchantability is codified in South Carolina as SC Code § 36-2-314, and the Fourth Circuit has further affirmed that the implied warranty may not be disclaimed or modified.⁴

70. As a result of Generac's breach of the implied warranty of merchantability, Plaintiff and Class Members suffered damages of an amount to be determined at trial.

COUNT III

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301, *et seq.* (On Behalf of Plaintiff and the Nationwide Class)

71. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

72. Plaintiff and Class Members are consumers within the meaning of 15 U.S.C. § 2301(3).

⁴ *Carlson v. General Motors*, 883 F.2d 287, 290-93 (4th Cir. 1989).

73. Generac is a supplier and warrantor within the meaning of 15 U.S.C. §§ 2301(4)-(5).

74. The defective PWRcell systems are consumer products within the meaning of 15 U.S.C. § 2301(1).

75. Generac's limited warranty for PWRcell systems is a written warranty within the meaning of 15 U.S.C. § 2301(6).

76. The implied warranty of merchantability is an implied warranty as defined in 15 U.S.C. § 2301(7), as modified by § 2308 and § 2304(a).

77. As outlined above, Generac breached both the express warranty and the implied warranty of merchantability.

78. Pursuant to 15 U.S.C. § 2310(e), Generac knew or had reason to know of the pervasive Defect in the warranted power systems, and has failed to cure its breach despite having a reasonable opportunity to do so in the length of time that such defective systems have been on the market. Plaintiff and Class Members are therefore entitled to proceed with this class action.

79. Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and Class Members are entitled to recover from Defendant the aggregate expenses reasonably incurred in the commencement and prosecution of this action, in addition to such other relief as is deemed just and proper.

COUNT IV

VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT, SC Code § 39-5-10 *et seq.* (On Behalf of Plaintiff and the South Carolina Subclass)

80. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

81. Plaintiff, Class Members, and Defendants are all “[p]erson[s]” within the meaning of SC Code § 39-5-10(a).

82. The marketing, sale, and installation of the defective PWRcell systems constitute acts of “[t]rade” and “commerce” within the meaning of SC Code § 39-5-10(b).

83. SC Code § 39-5-20(a) declares that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

84. Generac engaged in “unfair or deceptive acts or practices” by marketing, selling, and/or installing power systems that it knew or had reason to know were defective and unfit for their intended purpose at the time of installation, without disclosing the defective nature of the products to customers. Plaintiff and Class Members could not have reasonably learned of the defective nature of the products prior to making their purchases.

85. Pursuant to SC Code § 39-5-140, “[i]f the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper” as well as “attorney's fees and costs.” As Plaintiff and the South Carolina Subclass members have been damaged as a result of Generac’s unfair and deceptive practices set forth above, they are entitled to treble damages.

COUNT V

NEGLIGENCE

**(On Behalf of Plaintiff and the Nationwide Class or,
Alternatively, the South Carolina Subclass)**

86. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

87. Generac owed Plaintiff and Class Members a duty of reasonable care to ensure that the PWRcell systems would operate as reasonably expected by consumers, including the operation of the SnapRS switches.

88. Generac breached its duty by failing to ensure that the SnapRS switches were manufactured with proper materials, workmanship, and/or design, and did not suffer from any defects. Generac also breached its duty by failing to warn consumers that the SnapRS switches were not free of defects.

89. Due to Generac's negligence in manufacturing, the SnapRS switches are prone to deformation and melting, resulting in loss of energy generation and other more dangerous consequences. In some cases, the Defect has caused serious damage to property by igniting housefires.

90. In addition, Generac breached its duty by continuing to supply the defective SnapRS switches in PWRcell systems that were installed after they discovered the Defect. Generac failed to provide new SnapRS switches that were not free from the Defect for installation in the homes of new solar energy customers such as Plaintiff. By knowingly supplying defective switches to new customers, Generac placed Plaintiff and many Class Members at risk of the dangerous consequences of the defect.

91. As a direct and proximate result of Generac's negligence, and Plaintiff and Class Members have suffered damages of an amount to be determined at trial.

COUNT VI

UNJUST ENRICHMENT (On Behalf of Plaintiff and the Nationwide Class or, Alternatively, the South Carolina Subclass)

92. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

93. Generac was unjustly enriched in its sale and distribution of defective products, at the expense of Plaintiff and Class Members. Generac received a benefit in the form of the profits from the sales of the defective products, conferred on them by Plaintiff and Class Members. In the

instances where Class Members did not purchase the defective products directly from Generac, they are still the ultimate spenders of the sales to retailers, as the end purchasers whom the retailers sold the products to in turn.

94. Given the defective nature of the PWRcell systems, it would be unjust and inequitable for Generac to retain the benefits conferred. As the products were unfit for their intended use, Plaintiff and Class Members did not receive the goods they bargained for.

95. Generac knowingly and willingly accepted and enjoyed the benefits of the sales.

96. Plaintiff and Class Members are entitled to recover from Generac all amounts wrongfully collected and improperly retained by Generac, plus interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that this Court:

- A. Certify this action as a class action and name Plaintiff as representative of the proposed Class and Subclass, and appoint Plaintiff's counsel as Class counsel;
- B. Award Plaintiff and Class Members all compensatory, punitive, statutory and consequential damages, restitution, and disgorgement as authorized and warranted by law;
- C. Grant appropriate injunctive and/or declarative relief that:
 - a. Enjoins Generac from continuing to sell and distribute PWRcell systems with the defective SnapRS switches;
 - b. Requires Generac to recall and/or replace all defective SnapRS switches; and

- c. At a minimum, requires Generac to provide curative notice to all Class Members regarding the existence, cause, and potential consequences of the Defect.
- D. Award Plaintiff and Class Members the cost of this Action, including reasonable legal fees and expert fees; and
- E. Grant such further and other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 5, 2023

Respectfully submitted by:

By: s/Mary C. Flanner

Cross Law Firm, S.C.

Mary C. Flanner

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Application for Admission will be filed

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Application for Admission will be filed

Attorneys for Plaintiff and the Putative Class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required): Green Bay Division Milwaukee Division

I (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See updated instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending and **previously filed** cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases **and file a Notice of Related Action pursuant to Civil L.R. 3(b).**

Date and Attorney Signature. Date and sign the civil cover sheet.